

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 CARL FOUST,

12 Plaintiff,

13 v.

14 AQUILIAN, et al.,

15 Defendants.
16

No. 2:21-CV-0540-DJC-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42
18 U.S.C. § 1983.

19 Plaintiff filed a third amended complaint on June 13, 2024. See ECF No. 100. On
20 August 26, 2024, the Court issued findings and recommendations that certain defendants be
21 dismissed as either immune or for failure to state claim and that the third amended complaint be
22 dismissed with leave to amend as to the remaining defendants. See ECF No. 105. The findings
23 and recommendations were adopted in full by the District Judge on January 21, 2025. See ECF
24 No. 106. Plaintiff was directed to file a fourth amended complaint as to remaining defendants
25 Aquilian and Kahlon within 30 days. See id. Rather than filing a fourth amended complaint as
26 directed, on February 28, 2025, Plaintiff filed exhibits in support of the dismissed third amended
27 complaint. See ECF No. 108.

28 ///

1 As of March 18, 2025, Plaintiff had not filed a fourth amended complaint as
2 directed and the Court issued findings and recommendations that this action be dismissed without
3 prejudice for lack of prosecution and failure to comply with court rules and orders. See ECF No.
4 109. On April 21, 2025, Plaintiff filed a document entitled “Plaintiff’s Third Amended
5 Complaint,” which has erroneously been docketed as Plaintiff’s sixth amended complaint. See
6 ECF No. 110. In this filing, Plaintiff lists the California Medical Facility as the only defendant.
7 See id. at 1. Plaintiff alleges that, notwithstanding the prior dismissal of this defendant as
8 immune under the Eleventh Amendment, he may nonetheless proceed against the California
9 Medical Facility on a “Monell violation.” Id. Plaintiff does not list either Aquilian or Kahlon as
10 defendants. See id. This portion of Plaintiff’s filing appears to be identical to the third amended
11 complaint filed on June 13, 2024. Compare ECF Nos. 100 and 110. Attached to this filing is a
12 form complaint against unrelated defendants for violations allegedly occurring at Lancaster State
13 Prison.¹ See id. at 9-14. Since Plaintiff’s filing of April 21, 2025, Plaintiff has separately filed
14 supporting exhibits. See ECF Nos. 112 and 116.

15 Plaintiff’s April 21, 2025, filing fails to comply with the District Judge’s prior
16 order dismissing the third amended complaint. Specifically, that order limited the action to
17 Plaintiff’s claims against Defendants Aquilian and Kahlon and granted Plaintiff leave to amend as
18 to those defendants only. See ECF No. 106. The April 21, 2025, filing, however, does not list
19 either individual as a defendant and continues to present claims as against a defendant who has
20 been dismissed as immune from suit. Notably, the April 21, 2025, filing appears to be identical to
21 the third amended complaint which has been dismissed. Notwithstanding Plaintiff’s continued
22 non-compliance with the Court’s order to amend, the undersigned will nonetheless vacate the
23 March 18, 2025, findings and recommendations and provide Plaintiff with one final opportunity
24 to comply with the District Judge’s order. Plaintiff is again cautioned that failure to comply by
25 filing a fourth amended complaint as against Defendants Aquilian and Kahlon only may result in
26 dismissal of the entire action. See Local Rule 110. Plaintiff is also advised that, to be considered,

27
28 ¹ The events alleged in the operative third amended complaint, ECF No. 100, did not take place at Lancaster State Prison.

any exhibits, while not necessary, must be attached to Plaintiff's fourth amended complaint. The Court cannot refer to multiple separate filings in order to make Plaintiff's pleading complete.

Accordingly, IT IS HEREBY ORDERED as follows:

1. The findings and recommendations issued on March 18, 2025, ECF No. 109, are vacated.
2. Plaintiff shall file a fourth amended complaint, consistent with the undersigned's August 26, 2024, findings and recommendations and the District Judge's January 21, 2025, order, within 30 days of the date of this order.
3. The Clerk of the Court is directed to forward Plaintiff a copy of ECF Nos. 105 and 106.

Dated: June 9, 2025



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE